KANSAS JUDICIAL COUNCIL BULLETIN

DECEMBER, 1956 PART 4—THIRTIETH ANNUAL REPORT

PRETRIAL

Motion Days for 1957

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FOREWORD

From time to time the Judicial Council has had considerable discussion concerning the provisions of G. S. 1949, 60-2705, relating to pretrial procedure in district courts. Reports from over the state indicate a lack of uniformity in the use of pretrial conferences, and we are told that in a number of judicial districts the procedure is completely ignored. It has been suggested that perhaps the practice of having pretrial conferences would be used more widely if rules of procedure were promulgated by the Supreme Court under the authority of G. S. 1949, 60-3825. The Supreme Court has adopted rules relative to procedure of district courts, which are found at G. S. 1949, 60-3827, but they are silent with respect to pretrial procedure.

Judge A. K. Stavely, of Lyndon, a member of the Judicial Council, has given the matter much thought and study, and his article "Pre-trial—Five Years After" was published in the May, 1954, issue of the *University of Kansas Law Review*. He also has made talks on the subject at a number of local bar association meetings and legal institutes over the state. We include in this issue an address given by him at a legal institute held in Leavenworth in September, entitled "The Practical Side of Pretrial."

At the suggestion of other members of the Judicial Council, Judge Stavely has prepared a set of proposed rules on the subject for the consideration of the Supreme Court, and we also print them in this issue of the BULLETIN. No action on them has been taken, and the author states that they are merely a "starting point" so as to provoke consideration and discussion, to the end that some time in the near future a set of rules completely covering the subject may be adopted, thus bringing about uniform pretrial conference procedure throughout the state.

In this issue we also publish a list of Motion Days in the district courts for 1957.

The Practical Side of Pretrial

By Judge A. K. Stavely

The difficulty confronting the patient reader of pretrial literature is to know who to believe and whose thinking to follow. Sufficient though they may be to incorporate pretrial into our law, our statute, and Federal Rule 16 upon which it is based, sketch only the broad outlines of pretrial. Perhaps by design, rather than oversight, what goes beyond and touches the practical operation of pretrial is left unsaid. It may have been thought that the details should not be spelled out until practical experience should furnish a solid basis for more definite statement. Nevertheless, we wonder if our wise men did not forget that ancient, but still valid, maxim: "Wretched is the thralldom where the law is uncertain or unknown."

To supply what is lacking, a host of writers have expounded their own personal views as though they were the last word upon the subject, even as your speaker is about to do. Unfortunately, too little unanimity is to be found in these varied expressions. For example, on the simple question as to what it takes to constitute that pretrial proceeding which the law authorizes, no less than four distinct methods are recognized. All of them are dubbed "pretrial," but only one of them seems to measure up to the statutory standard. So it is also with many other questions. Some of the views expressed will be found sound and helpful; some are impractical; and a few are dangerous and unworthy. Whose leadership shall we follow? And even when we reach conclusions satisfactory to ourselves, will others be of the same mind; and will pretrial mean the same thing in one court that it does in another?

All this adds up to confusion worse confounded. What the lawyer wants, and must have, if he is to accept pretrial, is assurance and not anxiety; and he turns from his reading with dismay, feeling that although he has asked for bread, he has been given a stone.

What is lacking is the voice of authority, using that term in its compulsive, rather than its complimentary, sense. The solution of the lawyer's difficulties will, in a large measure, be found in uniform pretrial rules prescribed by the Supreme Court and designed to take the guesswork out of pretrial. We have experimented long enough, and the time is now ripe to place pretrial on the solid basis of certainty. Even now, the Judicial Council of Kansas has such rules under consideration; and your interest and assistance in this behalf is solicited.

Another thing about pretrial literature is that most of it comes from the judiciary. Pretrial from the viewpoint of the bench is explained in detail. Although patient gleaning through these writings will give the lawyer many valuable ideas, but little effort has been made to present the subject from the vantage point of the counsel table. The plight of the practicing lawyer who is expected to use pretrial as a working tool has been too much neglected.

Being a part of our civil code, pretrial is here to stay, whether you like it or not. Those who have used it most like it best and it will be invoked increasingly in the years which lie ahead. Regardless of your own personal wishes

you may, at any time, be called upon to participate in it. The wise man will therefore lay aside his own preference and will prepare for it by familiarizing himself with both its theory and practice. This is the only apology for a not too popular topic. In these remarks we shall attempt to examine the too much neglected practical side of pretrial, and to explore some of the problems arising from its practical use.

Let us begin by supposing that in your mail this morning you received a copy of an order setting one of your cases for pretrial, or it may be, a notice of the hearing pursuant to such an order. Whatever its form, its tidings may not be entirely welcome, for you may not relish pretrial in this particular case, or perhaps you may be hostile to the whole pretrial procedure. But regardless of your own wishes, you have no choice in the matter; it is not for you to say whether the case will be pretried. That decision rests entirely in the discretion of the court, and there is nothing you can do about it. The court's order calling the conference is of equal dignity with the other orders which the court may make in the case; and as our Supreme Court has said, orders of the court are made to be complied with and not to be disregarded. It is therefore your duty to be present at the conference.

If you fail to attend without reasonable excuse, and you represent plaintiff, the court may dismiss your case for want of prosecution. If you are for defendant and so fail to appear, judgment cannot be entered against your client, for having answered he is not in default and is entitled to a trial. However the court may proceed with the conference in your absence, doing the best it can under the circumstances; but at the trial you may be hampered by the pretrial order made without adequate presentation of your views. And if your failure to attend the pretrial conference is defiant and savors of obstinate contumacy you may be subjected to punishment for contempt.

You may not be at all eager for the pretrial conference and although your presence is due entirely to compulsion, yet your personal attitude toward it is of the highest importance. In a large measure, a satisfactory pretrial depends upon the co-operation of counsel. Aside from anything that might be said for pretrial as a more effective instrumentality for the administration of justice, let us look at the matter from the standpoint of your own best interest and your personal advantage. Two alternatives are open to you. You may "drag you feet," so to speak, and like Shakespeare's "whining school boy . . . creeping like a snail, unwillingly to school," take part in the conference grudgingly and with reluctance. This course, you will find, results in nothing but a waste of your time, as well as that of the court and your adversary. On the other hand, much as you may regret the necessity, you can make the best of the situation and turn it to your profit by the better insight into the case which the conference will surely bring you.

This better understanding is not the only benefit you will get from pretrial. In the conference you will have opportunity to rectify those plain mistakes and annoying oversights which so often vex even the best practitioners. Pretrial brings these lapses to light and permits their correction before it is too late. Again, time spent on pretrial is not time wasted. It is nothing more than time which you ought to spend preparing for trial. It is work that will not need to be done again; and it is preparation of a kind far better and more thorough than any you can make in your own office. Furthermore the time saved at

the trial because of those admissions and stipulations which the conference invites and encourages, may easily exceed the time spent in the conference. These benefits of pretrial are not imaginary; they are real, and they are yours for the taking. Experience has demonstrated their value, and the great majority of those who have participated in pretrials acknowledged that they have been helped by them.

Let us go back for a little to that copy of the order, or that notice of the conference, which you received this morning. Perhaps it may contain some directions as to what you should do in anticipation of it. In order that the conference be not unnecessarily prolonged, it is obvious that some things can and should be done in advance of the hearing. One purpose of the conference is to ascertain what facts alleged are not in serious dispute. At the trial, no time need be wasted on formal proof of the matters so admitted, and especially in long and complicated cases, this time saving device has proved invaluable.

If, prior to the conference, opposing counsel will confer together and reach some understanding as to what proof can be dispensed with, they can come to the conference with the problem of admissions already worked out, and so shorten the hearing materially. This is one of the lessons learned the hard way, for in one conference nearly two hours were consumed in requests for admissions, most of which were refused. Similarly the hearing may be shortened by advance agreements relating to the use of exhibits as evidence. Thus there is much to be gained if the order for the conference gives specific directions with regard to preliminary efforts of this kind.

Another thing which can and should be attended to in advance of the conference is to make sure of your authority to bind your client. Your ordinary authority as his attorney extends to procedural matters only; you may need authority to bind him by agreements touching his substantive rights. For such purpose you must have express authorization. The lawsuit belongs to your client and not to you, and you cannot compromise his case or do anything which will impair his substantive rights without his express consent. This will become highly important if the subject of settlement should come up at the conference.

Examination of the order or notice which you received may suggest some questions as to the when, the where, and the who of the conference. As to time, the conference cannot be ordered until after the issues in the case are made up; but when should it take place with reference to the actual trial? The usual answer is from one to three weeks before trial, but actually the particular circumstances must govern. The conference itself may make plain the undesirability of a definite setting, for the matters there developed may suggest new lines of investigation both as to the facts and the law, or the need for some particular evidence which is not readily available. At a pretrial conference in a partition case, one heir disclaimed all knowledge of his overseas kin and demanded strict proof of their heirship. Thus it became evident that depositions would have to be taken abroad. Any effort to try the case soon after that pretrial conference would only have resulted in a succession of applications for continuance.

Where should the conference be held, at chambers or in the courtroom? There is no uniformity of practice or belief upon this question. Some contend for a hearing at chambers, arguing that the attorneys will express themselves

more freely in the relaxed atmosphere of an informal meeting. This contention may have some force at first blush, but there is much to be said against it. Plausible as it may seem, does there not lurk underneath it the sinister hope that the congenial glow of good fellowship may entrap a fellow lawyer in some unguarded and unintended concession? If such be its purpose, it is not consistent with fair play, honorably practice or good faith; and it will work irreparable harm to pretrial in the mind of every lawyer who suffers from this dubious strategem.

That is not all. The pretrial conference is not a sort of legal side show; it is an important and integral part of the trial itself. Its results influence the future course of the trial most seriously, and we should recognize it for what it is. Just as the administration of justice is impeded if the trial of a case is not conducted in an orderly way, so the success of the pretrial conference may be jeopardized by informality. As said by Judge James Alger Fee in an article published in the *Columbia Law Review*, "The simplification of the issues is a technical process, and the danger of informality is that it leads to sloppy thinking." Experience with this sort of conference shows that informality also leads to a waste of time. As lawyers, we are cognizant of the habits of our profession, and we know what happens when we get together, in the judge's chambers or elsewhere. We visit, we talk—about news of common interest, legal or otherwise; about social events, vacation trips, golf scores, the big fish that got away, the new shotgun; we jest and tell stories. The propensity is unconquerable—and we love it. Whether we wish it or not, such extraneous matters are bound to intrude upon the conference at chambers, thus prolonging it unduly.

But the conference at chambers suggests another objection. If, perchance, your client sees you emerge from a smoke-filled room with the unwelcome news that some claim or defense upon which he pinned his hope, has been excluded from the case, will he feel that you have served him well? And even if you succeed in placating his displeasure so far as you are concerned, what gloomy suspicions may he not entertain concerning the judge? Like Caesar's wife, the court should be free, not only from wrongdoing, but also from even the appearance of wrongdoing. More than half a century ago, our Supreme Court said that next in importance to the duty of rendering a righteous judgment is that of doing it in such a manner as will beget no suspicion of the fairness or integrity of the judge. Publicity in all court proceedings is a wise safeguard against suspected misconduct.

Under the pretrial statute, the ordering and holding of a conference is the function of the court itself, and is not one of those duties which can be discharged by the judge as distinguished from the court over which he presides. It is a phase of the regular business of the court, and there is only one place where the business of the court can be carried on; and that is in the regular courtroom to which all interested persons have access. Your client will feel free to enter there; but he will hesitate to invade the sanctity of the judge's chambers, and he will not be quite sure that nothing devious took place therein.

Who should be present at the conference? What has already been said suggests a partial answer. At the very least your client should be advised of the hearing and he should be invited to attend it, as seems to be the rule in some jurisdictions. His presence may not only be advisable but even neces-

sary under some circumstances. And of course you should inform him as to the importance of the conference and what may take place at it.

Since a major purpose of pretrial is to prepare both court and counsel for the actual trial, wherever possible the same judge who is to preside at the trial, and the counsel who is to conduct the trial, should be present. There is a decided difference of opinion whether the court reporter should be present and take down all that is said and done. Some contend that, to quote Robert Burns, "a chiel amang us takin' notes" discourages an atmosphere of informality. On the other hand, the reporter's notes will help greatly in drafting the pretrial order. Furthermore, if an appeal should be necessary, the lack of an accurate and complete record of this important step in the case may prove to be a substantial handicap in the appeal. By all means the reporter should be present and if nothing else, he can take charge of such exhibits as the parties agree may be offered without formal proof, and any orders made by the court can be dictated to him.

Now, if consideration of your own best interest has convinced you that you should participate in the pretrial conference, you should next consider your preparation for it. The conference should never be approached in a manner "spontaneous and unrehearsed," to use a familiar phrase. It requires preparation, not only by counsel on both sides, but by the judge as well. Not much can be hoped for from a conference which is not preceded by adequate preparation; and the benefit you may derive from the conference will vary proportionally to the effort you put into preparing for it. Indeed without proper preparation, the conference will amount to little more than an aimless, tiresome and time-consuming discussion.

Your preparation should begin with a careful analysis of the pleadings; and you may be surprised to discover how much can be learned about the case from a close study of what has been alleged. In such study you will have an advantage over the judge, for he will likely know nothing about the case except what is reflected by the pleadings. You, on the other hand, know what your own testimony will show and you may have some intimation as to what the adverse witnesses will say. Thus you may be able to discern some questions in the case which the judge will be unable to foresee.

To be sure, you may have drafted one or more of these pleadings yourself. Never make the mistake of assuming they are all that they ought to be, but give them the same close scrutiny you bestow on your adversary's pleadings. Reviewed in the light of later and more complete information, critical examination may disclose that your statement of your position is not as full and accurate as it should be; or perhaps some allegation you deemed sufficient is in fact inadequate; or worst of all, you may find that some important matter you thought you had included has been omitted entirely. This has been known to happen to experienced lawyers.

Apart from legal questions involved—and of course your preparation will include a diligent search for authorities which will sustain your legal position —a good way to test the sufficiency of a pleading is by comparison of its allegations with those of your adversary. For this purpose it will be found helpful to set down in parallel columns for the petition, the answer and the reply, a concise statement of each allegation of the respective pleadings; the defensive matters being set down immediately opposite the corresponding affirmative

allegations. When this is done, the whole factual framework of the case can easily be grasped. So viewed, your outline ought to disclose a complete series of matters affirmed on one hand and denied or avoided on the other.

Your outline will probably show some allegations of fact which your opponent has admitted or failed to traverse. It will likely also show others which, although technically denied, are not indispensable to the action or defense, and about which there will be no serious dispute at the trial. These should be noted, for they are matters which will not need proof, and they constitute the subjects of admissions concerning which inquiry will be made at the conference. Otherwise, the facts which your outline shows are disputed form the questions of fact to be determined at the trial; and these questions should be discussed in detail at the conference.

Your analysis of the pleadings is not the only preparation for the conference which you should make. To be successful, the conference must have a program, and this program should be adhered to. Your preparation should therefore include familiarizing yourself with that program, especially if your experience with pretrial has been limited. The conference is not a difficult thing, yet it is not a mere "talkfest" for it must culminate in the pretrial order which will control all subsequent proceedings in the case, and hence it is freighted with serious consequences. Thus it is important that you understand the general course of the proceedings and what direction the discussion will take, and that you know what to expect at the conference.

We get some idea as to the scope of the conference from our statute, which provides for consideration of these subjects: simplification of the issues, amendments to the pleadings, admissions, limitations on the number of expert witnesses, the advisability of reference to a master for findings to be used as evidence, and finally, such other matters as will aid in the disposition of the case. This sketches in broad terms the agenda of the conference, but it does not tell us all we need to know about the conference program and our relation to it.

Perhaps in no other state have the elements of pretrial been outlined in such detail as in New Jersey. By rule, the Supreme Court of that state has prescribed a sixteen-point program for the conference. The steps provided for are: a concise descriptive statement of the nature of the action; the factual contention of plaintiff as to the liability of the defendant; the factual contention of defendant as to nonliability and affirmative defense; the admissions or stipulations of the parties; all claims as to damages and the extent of injury; amendments to the pleadings; specification of the legal issues raised by the pleadings as amended; specification of the legal issues raised by the pleadings, but which are abandoned; list of exhibits marked in evidence by consent; leave for further discovery; limitation on the number of expert witnesses; directions for filing briefs; order covering the right to open and close; other matters which will expedite the trial; estimated length of trial; and, when the case will be put on the weekly call.

This goes into such detail that it seems a bit formidable, especially in view of the further rule that each of these items must be specifically taken up at the conference and the action on each must be noted in the pretrial order. Furthermore, some of the items of this program are debatable, as well as the order in which they appear.

A much simpler, yet comprehensive, program may be suggested as follows:

1. Plaintiff's statement of his factual contentions and of his theory of his action;
2. Defendant's statement of his factual contentions and of his theory of defense;
3. Requests for leave to amend the pleadings;
4. Admissions and stipulations of the parties;
5. Statement of the issues of fact to be tried;
6. Statement of the questions of law to be determined;
7. Other matters which may expedite the trial.

This last topic, "other matters" is an omnibus provision intended to include all those numerous legal chores which must be attended to, but which, if deferred until the trial, will consume valuable time. These will vary from case to case, and no complete list can be given; but included are such steps in the case as dismissals of parties and causes of action; determination of the burden of proof and the right to open and close; ascertaining whether trial is to be to the court or the jury and the probable time needed for trial; approval of publication service; appointment of guardians *ad litem*; limitations on the number of expert witnesses; requests for a view and for medical examination; marking of exhibits in evidence by consent; suggestions as to proposed instructions; directions for filing briefs if desired by the court; inquiry as to the possibility of settlement; and similar incidental matters. All such steps in the case should be kept in mind in your preparation for the conference in order that as much time as possible be saved at the trial.

Careful and thorough preparation will give due consideration not only to each part of the program, but it should also take note of the program as a whole. It will be observed that the program is sectionalized, so to speak. This is not out of deference to form for form's sake but is intended to prevent interruption of that logical progression of thinking which is necessary to clear and definite understanding. What is sought to be accomplished by the conference is an analysis of the whole case in such a way that all of the critical questions of law and of fact will stand forth clearly and plainly. This result will not follow if, as is sometimes done, counsel mingles with his statement of facts, his claims as to the law.

Always, and first of all, we must know the facts of the case. Those serried ranks of ponderous legal tomes, which so adorn your office and so deplete your profits, contain nothing but idle abstractions until their force is invoked by the specific facts of a particular case and it is all the facts of the case which we must have. What the adverse party claims the facts to be may put an entirely new face on the controversy, or, if not that, may raise new questions which had not been anticipated. Hence to commingle in the same statement a one-sided version of the facts and the law is to commit oneself prematurely. While the widest latitude should be given to the discussion of each of the several parts of the conference program, it will be found more satisfactory to adhere to the separation contemplated by the program, and so far as possible to confine the discussion to the item immediately under consideration.

In your preparation for pretrial, careful thought should be given to what you should say when called upon to state your factual contentions. Some lawyers seem a bit puzzled by this requirement. If you have alleged your claim

or defense properly, you will have stated it in terms of the ultimate facts, and these may not clearly present all of the legal questions which may be important in the trial. The ultimate facts so alleged are in the nature of conclusions and what is needed in the statement is to clothe these ultimate facts with the evidentiary facts which support such conclusions. Repetition of your pleadings in the statement serves no good purpose, but the statement should be much the same as your opening statement at the trial. If your case is to be tried by the court, your statement at the conference should save repetition thereof at the trial so that time can be saved in this respect.

There is no reason for the lawyer to be timid in his factual statement at the conference lest he disclose some secret advantage prematurely. For one thing, you have, to some extent, exposed your hand by the first pleading you filed in the case. The requirement that you state your factual contentions does not necessarily mean that all your secret weapons be made public. Pretrial is not a form of the discovery process nor is it a substitute for discovery. You cannot be required to disclose your plans, your private memoranda, nor the means by which you expect to make your proofs. It should be borne in mind that the conference is not something extra, but is a part of the trial; also that your right of recovery or defense will be restricted at the trial to the specific matters developed at the conference. It is highly important therefore that your statement be comprehensive and that it fully and accurately reflect all of the matters of fact and of law upon which you will rely.

In one particular the statements at the conference may properly include something not ordinarily embraced in the opening statement at the trial. This is your statement of your theory of action or defense. Some courts require this to be stated at the conference. The theory of the case and its importance cannot be too highly stressed for often success will depend upon ingenuity in discovering, and skill in selecting, a tenable theory of claim or defense. Certainly your own thinking will be clarified by stating your theory at the conference and any doubt of your position will thereby be removed.

The next item of the conference which should have serious consideration in your preparation is that of amendments. One of the most valuable aspects of pretrial is its use to reframe the pleadings by the authorization of necessary amendments. To this end the court has broader power to permit amendments than can be found in any other section of the code. This function of pretrial rests upon the trend of modern legal thinking to this effect, that the client ought not to be punished for any emendable mistake of his counsel. The overall purpose of pretrial is to make the trial a contest upon the real merits of the case rather than that it be disposed of on some technical question of pleading. So if you have blundered in your pleading, pretrial gives you a second chance through the power of the court to correct such errors at the conference. And since the pretrial order supersedes the pleadings, many questions as to the sufficiency and effect of the pleadings are resolved by such order, and many matters now raised by motion will lose their significance as the result of the conference. It may be that in this we may look to pretrial for relief from that unending flood of motions which now afflicts us.

Next as to admissions at the conference. Why should time be wasted at the trial in proof of facts which cannot affect the result of the case in any material respect? Perhaps the most signal example is that of foundation proof

for the introduction of documentary evidence. From every jurisdiction where pretrial has been used come tributes to the helpfulness of pretrial in this respect, especially in long and complicated litigation. No sound reason can be found for failure of counsel to admit such matters freely. Your admission that the document is genuine and what it purports to be by no means deprives you of your right to challenge its legal sufficiency and effect. Refusal to co-operate in this respect certainly places the lawyer who insists on pursuing the course in an unenviable light. Resolute insistence on putting your adversary to all the trouble you can seems a little childish, for such an attitude is entirely out of step with these modern times. Of course, it is futile to hope for, and a waste of time to solicit from your adversary, admissions of facts which will be essential to your case or fatal to him. But as to matters which are not really important to the case, your failure to co-operate on purely captious or technical grounds may serve only to expose your inability to grasp the really important questions in the case. It should also be remembered that costs incurred in making proof of facts which should have been admitted may be taxed against the party whose unwarranted refusal makes such expense necessary.

We come now to the most exacting task of the pretrial conference—the stating of the questions of fact to be tried and the questions of law to be determined. Your preparation must, by all means, give careful attention to these matters. These items of the program should never be approached carelessly, but only after serious reflection; for even the language used in their statement calls for the utmost precision and clarity. This is especially true because of the serious consequences attending the inclusion in, or exclusion from, the pretrial order of a particular question of fact or of law.

Of course, every case abounds in a multitude of questions, big and little; and some discrimination must be exercised as to which of them should be incorporated in the order. It is not expected that every possible question in the case should be brought out at the conference. Those questions which constitute the turning points of the case must be brought forward at the conference so that they may be given consideration in the pretrial order, for what is not in the order is not in the case. However, questions of a subordinate and collateral nature arising under the major questions in the case need not be discussed at the conference; but less harm will result from the suggestion of too many questions than from too few.

The scope of the questions which should be brought out at the conference may be somewhat enlarged if Sec. 60-2902 is to be resorted to. This section, enacted as a part of the code of 1909, is recognized as a valuable adjunct to pretrial. It authorizes the court or judge, in his discretion, to hear and determine in advance of the trial, any or all questions of law which appear to be involved in the case, regardless of how they may arise. Among other things, this section sanctions advance rulings on questions of evidence. Perhaps it may sanction rulings on questions not brought out at the conference, provided they are such as appear to be involved in the issues as limited by the pretrial order. If this section is to be invoked, it might be well to suggest at the conference all questions on which such advance ruling is desired.

The final step in the pretrial conference is the pretrial order. Your preparation for the conference should include consideration of its terms, for you may be asked to prepare it. There is no uniformity of practice in this respect,

for in some courts the judge prepares it and in others he directs counsel to do so. Whoever may draft it, the task ought not to be too hastily entered upon, but time should be taken to review the notes of the conference, to reflect upon the matter carefully and to choose its language with caution. It is arduous work, but of all who take part in the conference, he who drafts the order gets the greatest benefit from the conference in the better insight into the case which preparation of the order gives him.

As to the form in which the order is cast, a running account of the proceedings at the conference is undesirable because of the difficulty which may arise in the quick identification and location of a particular matter. Each item of the conference program should be set out separately under its proper heading; and if no action was taken in regard to a particular item, that fact should be stated. The order, then, should begin with a brief description of the nature of the action, followed by a recital of the substance of the factual statements of counsel. Next, any action taken with respect to amendments of the pleadings should be noted, followed by a separate statement as to the admissions and stipulations of the parties. In order following should be listed separately the questions of fact to be tried and the questions of law to be determined. Finally the order should set forth all the incidental matters attended to at the conference in order that the trial may be expedited.

The order need not be volumnious, but it ought to be long enough to cover all the subjects enumerated in the statute. A caveat must be lodged against the all too current tendency to brevity in the order at the expense of some important features of the conference. This may be illustrated by reference to a copy of such an order printed in a familiar legal periodical, preceded by the editorial praise that this order "vividly portrays what can be done toward saving the time of court and counsel by effective use of pretrial with cooperation of the attorneys."

As printed this order consumes fifty-eight printed lines, most of which relate to admissions and stipulations which doubtless did save time and thus deserved the editorial praise. Only six lines are devoted to that other important phase of pretrial, the clarification of the issues. They read as follows:

> "The plaintiff contends that the cause of his fall and resultant injury was the negligent conduct of the driver of the vehicle*s*, which the defendant denies, and raises the principal issue of law and fact for the trial court."

Here, perhaps, we should pause long enough to clarify this clarification of the issues. Notwithstanding the use of the plural, "vehicle*s*," only one driver and one vehicle were involved in this accident.

The scant attention given by this order to one of the principal objects of pretrial, the better preparation of court and counsel to try the case through the simplification and clarification of the issues, should be noted. Plaintiff's case rested on his claim of negligent conduct on the part of the driver—but negligent conduct in what respect? What were the particular acts which constituted such negligence? We are not enlightened on this subject by this order, but apparently plaintiff was to be permitted to recover on unspecified acts of negligence. How could defendant know what it had to meet, or what it had to do to prepare its defense? And was not proximately causal relationship between the negligence and the injury a necessity? Yet there is no direct recognition of this legal problem in this order. And these things to one side, was not

the measure of damages one of the important questions in the case? Yet it receives no mention in this order. Notwithstanding the distinguished source from which this order emanated, it cannot command our wholehearted approval. All that it accomplished in the way of saving time at the trial could have been brought about by private agreement of the attorneys without pretrial.

Unfortunately, the fault in the order above referred to will also be found in many of the published specimen orders. The admissions of the parties are rehearsed in detail, but there is an apparent reluctance to touch upon the subject of clearly defining the issues. This may stem from a belief that the pleadings sufficiently define the issues. Perhaps such a conclusion may be justified, but that does not warrant evasion of the statutory duty to consider the clarification of the issues at the conference. Whatever the result of that consideration may be, it should be reflected in the order. In *Harding v. Continental Pipe Line Co.,* 172 Kan. 724, 728, in discussing our pretrial statute, Sec. 60-2705, the Supreme Court has said: "Obviously it was intended that the pretrial order should properly recite the action taken at the conference touching the subjects mentioned in the statute."

Why all this insistence upon clarification of the issues? It is because there is far greater need for it than we may suppose. In a single lifetime we have seen the science of pleading go out the window. Far too often the modern pleading is inartistic—sloppy both in its thought and its expression. Habitually we assume that we understand it and that we know what the pleader meant. Sometimes the draftsman himself doesn't seem to know what he did mean; and it is all too easy to delude ourselves as to what issues are really tendered. Why should we take that risk, when such questions can be settled definitely at the pretrial conference? The pretrial statute enjoins consideration of the issues at the conference and the decision above referred to requires that the result of that consideration be plainly stated in the pretrial order. If in your case, the order should be such as to deprive you of the full benefit of the pretrial statute, the question should be preserved by timely objection entered in the record. This might prove a substantial point in your favor on appeal.

Thus we have completed our journey through the practical side of pretrial, from its inception in the order calling the conference, to its termination in the pretrial order. At some length we have dwelt upon these points: participation, preparation, and the program: May we venture to add another—persistence?

It is possible that your early experiences with pretrial may not have been entirely satisfactory; but do not be discouraged and do not condemn the pretrial program prematurely. If you analyze your experiences, you will probably find that the difficulty does not so much arise from the general principle of pretrial as it does from the manner in which it has been used. Remember, however, that pretrial is a comparatively recent development in the judicial process, and that so far, only the general outlines of its methods have the sanction of authoritative pronouncements. Remember too, that the task of our generation is that of pioneering—of experimenting with pretrial and endeavoring to make it workable through the hard process of trial and error. In this effort you may have a part; for out of your unpleasant experiences you may be able to suggest some helpful improvement. Keep on working with pretrial and you will come to like it better.

The faint of heart may protest that pretrial procedure is too laborious and

that its benefits do not justify the time and work which the conference calls for. The effort involved is chiefly that of mental activity. As lawyers, dare we confess our intellectual lassitude? Ought we to deny to our clients the exercise of those talents of mind for which they employ us, and which above all else are the badge and glory of our calling? The law is a learned profession and implicit in its practice are knowledge and skill. It demands of those who follow it clear thinking, careful analysis, keen discrimination, sound judgment and wise discretion. The lawyer who gives anything less than this cheats both his client and himself.

Browsing through a book of Readings in English History one evening recently, I came across the translation of an exercise prepared about the year A. D. 990 for use in teaching the Latin language to Anglo-Saxon school boys. It is in the form of a dialogue between the schoolmaster and his pupils, each student in turn being called upon to describe his former occupation and to tell the work he did in it. Two of these scholars, a wood carver and a smith, engage in a dispute as to which of their crafts is the more useful; whereupon the schoolmaster bids them cease their strife and live in peace with one another, adding these words:

> ". . . and I give this advice to all workmen, that each one exercise his trade diligently, because he who deserts his trade will be deserted by his trade. Whether thou art a priest, or a monk, or a layman, or a soldier, busy thyself about it; be what thou art, because it is a great loss and shame to a man not to be willing to be that which he is and ought to be."

The admonitions of this writer, dead and gone for almost a thousand years, are just as sound for lawyers of this twentieth century as they were for the tradesmen and artisans of ten centuries ago. Translated into terms of present application, he means to say to us, "Be what you are; you claim to be a lawyer, act like one." Amid all the distractions of modern life, the lawyer ought not to be found wanting in that determination and energy which accepts without shrinking all the duties and responsibilities inherent in his profession. Self-interest, if nothing else, bids us exercise ourselves diligently in our vocation; for we desert our profession when useful skills and aptitudes are permitted to remain undeveloped or to wither from disuse. And to the extent we are content to practice law only half-qualified, to that extent has our profession deserted us.

Beyond question, pretrial does something good—not only for the case in hand, but also for those who take part in it; for you can not engage in it wholeheartedly without being made a better lawyer by it. Is it sensible then that we should spurn as too much trouble, this agency so profitably in the development of those mental traits which mark the capable lawyer? Rather, putting aside complacency and lethargy, let us busy ourselves with pretrial as an effective instrumentality for promoting that professional competence which we all need so much; remembering that it is a great loss and shame to a lawyer not to be willing to be that which he is and ought to be.

Shall We Implement Pretrial by Uniform Rules?

By JUDGE A. K. STAVELY

What is the pretrial procedure established by G. S. 1949, 60-2705? What is its purpose and what are its effects? What ideas are implicit in it? And most of all, how is it to operate? The statute itself gives little information on these subjects; nor can we find conclusive answers by turning to the published materials on pretrial.

For some time the Judicial Council has had under consideration an effort to make pretrial more workable by means of uniform rules intended to stabilize pretrial procedure. After much study and effort, a draft of such proposed rules has been formulated. It is printed herewith for consideration by the lawyers of this state.

No claim is made for any great originality in these proposed rules; on the contrary they are a composite of carefully selected ideas gathered from many sources. Again, it is not claimed that these rules will answer all of the problems of pretrial; but any measure of certainty on that subject is better than the present doubt and confusion. Nor is it claimed that these rules are perfect. They are tentative only and are offered as a basis for study and consideration.

It is the hope of the Council that publication of these proposed rules will stimulate discussion and debate out of which will come fresh ideas and new viewpoints which will be helpful in the development of better rules. The Council invites comment and criticism from thoughtful lawyers everywhere, and all suggestions will receive careful study and due consideration.

The draft of the proposed rules is as follows:

Proposed Rules for Pretrial Procedure

1. **The nature and purpose of pretrial proceedings.** The pretrial procedure authorized by G. S. 1949, 60-2705, is a step in the disposition of a civil case, and is an integral part of the trial thereof. Its purpose is to secure a more efficient and speedy administration of justice by definite specification of the precise questions of law and of fact which must be determined in the case, and by expediting the trial both by means of admissions and agreements of the parties as to matters not actually disputed, and by disposing of such incidental steps in the case as can be attended to in advance of the trial.

2. **The order for holding the pretrial conference; notice.** After the issues have been joined in any civil case, and either on its own motion or on the application of any party, the court may, in the exercise of its discretion, determine that a pretrial conference is desirable in said case. If so determined, the court shall make an order designating a time and place for holding such pretrial conference, and shall cause copies of such order to be mailed or delivered to all the attorneys in the case. No other notice of the holding of such conference shall be necessary.

3. **Contents of such order.** Said order shall specify the judge who is to hold such pretrial conference and shall designate his courtroom as the place

where such conference is to be held; but with the consent of the parties, said order may direct that the conference be held at the chambers of such judge. The time set for the conference should not be so near to the making of such order as to prevent adequate preparation for the conference, nor should it be so close to the date of trial as to interfere with proper preparation for trial. Said order shall also direct the attorneys in the case to confer together at least two days prior to the conference, to ascertain what matters are not actually disputed, what matters can be admitted or agreed upon, and what exhibits may be offered at the trial without foundation proof.

4. **Multiple judge districts; pretrial judge.** Where possible, the pretrial conference should be conducted by the judge who is to try the case; but in districts having more than one judge, the judges of said district may designate one of their number to hold all of the pretrial conferences in said district for a particular period. In such cases, and regardless of the court or division in which the case is pending, the judge so designated shall have full and exclusive jurisdiction for all purposes connected with pretrial proceedings until such case is called for trial. After the case is called for trial, the trial judge shall have full and exclusive jurisdiction over any matter relating to pretrial which may arise in the case.

5. **Continuances; additional conferences.** The judge whose duty it is to hold the pretrial conference may, in his discretion, continue or adjourn the hearing from time to time; and he may order additional pretrial conferences to be held in the same case at any time before the trial begins. Previous orders made pursuant to earlier hearings may thereafter be modified in accordance with the results of such later conferences notwithstanding the expiration of the term at which such original orders may have been made.

6. **Duties in advance of the conference.** On receiving a copy of the order calling the pretrial conference, the attorneys shall inform their clients of the time and place of the hearing, inform them of its nature and purpose, and advise them that they have the right to be present at the hearing and that they should attend it. Counsel should also secure from their clients such special authorization as may be necessary in connection with the subjects to be discussed at the conference. At least two days prior to the conference, opposing counsel shall confer together to ascertain what matters are not actually disputed in the case, and what matters are admitted or agreed upon. They shall prepare a detailed written memorandum of the matters so consented to and agreed upon, and shall present the same to the court at the pretrial conference.

7. **Duty of participation in the pretrial conference.** It shall be the duty of the pretrial judge and the attorneys in the case to make adequate preparation for the pretrial conference, and to co-operate to accomplish the purposes of the pretrial procedure. The attorneys who are to conduct the trial of the case must be present at the conference, and it is their duty as representatives of their clients to state fully and unequivocally their respective claims and contentions in the case, and their positions with reference to all the subjects discussed at the conference. The judge shall preside at the conference and shall participate actively, yet fairly and impartially, in the discussion at the conference.

8. **The program of the pretrial conference.** The pretrial judge and the

counsel having met for the pretrial conference, the case and the trial thereof shall be discussed in the following manner:

(1) Plaintiff shall state his factual contentions and his theory of his action;
(2) Defendant shall state his factual contentions and his theory of his defense and his counter suit, if any;
(3) The parties shall present any request for permission to amend their pleadings in such respects as they deem desirable;
(4) The parties shall submit to the court a detailed statement of the matters admitted and agreed upon, including any not incorporated in the statement in writing mentioned in Rule 6;
(5) The issues of fact to be tried shall be stated;
(6) The questions of law to be determined shall be stated;
(7) Any action may be taken to dispose of such procedural steps in the case as can be attended to prior to the trial.*

9. **Amendment of pleadings at the conference.** At the pretrial conference, the pretrial judge may authorize amendments to any pleading which may be necessary in the furtherance of justice, and this notwithstanding that the issues have been previously joined by the pleadings. The pretrial judge may also, on his own motion, suggest such amendments as he deems necessary; but the party to whose pleading such proposed amendment relates may accept or reject such suggestion.

10. **Pretrial not to be used to force settlement or discover evidence.** It is not improper for the judge presiding at the pretrial conference to inquire as to the possibility of a settlement of the case, but he shall not attempt to force any compromise or settlement. The pretrial procedure is not intended as a means of coercing the parties into any involuntary admission of fact nor to compel any compromise; nor is it an instrument for the discovery of evidence. While it is the duty of counsel to state, fully and frankly, his positions and his contentions on which his action or defense is based, he is not required to reveal his evidence, the names of his witnesses, nor the means by which he expects to prove a particular fact, and he cannot be compelled to disclose his private plans, files or memoranda.

11. **The pretrial order; form and content.** If it appears from the discussion at the conference that there are no disputed questions of fact to be tried, the judge presiding at the pretrial conference may, after giving the parties due opportunity to be heard, proceed to decide the questions of law in the case and to render final judgment on the merits. However if the conference discloses that there are issues of fact to be tried, said judge shall make, or direct the attorneys to prepare, the pretrial order in the case within a reasonable time. Said order shall state the general nature of the action and shall, separately and under appropriate headings, summarize the conclusions reached at the conference with respect to each of the items listed in Rule 8, including a detailed statement of the matters admitted and agreed upon. When said order

* Such as, for example, dismissals of parties and causes of action; determination of the burden of proof and the right to open and close; ascertaining whether trial is to be to the court or jury and the probable time required for trial; approval of publication service; appointment of guardians *ad litem;* limitations on the number of expert witnesses; the marking of exhibits in evidence by consent; suggestions as to proposed instructions; directions for filing briefs if desired by the court; inquiry as to the possibility of settlement, and like matters. This may also be an appropriate time to request advance rulings on questions of law under Sec. 60-2902. Use of this statute will be found helpful in many cases, and especially so in connection with pretrials.

is signed by said judge, it shall be filed in the case and copies thereof shall be delivered or mailed to the attorneys in the case. Motions to correct, modify or supplement such order must be filed within three days after the pretrial order is filed.

12. **The effect of the pretrial order.** The subsequent course of the action and the trial of the case shall be controlled by the pretrial order and such subsequent modifications thereof as may be necessary to prevent manifest injustice. The pleadings, having served their purpose, are superseded by such order, except as reference thereto may be necessary to secure proper modification of such order. Only the issues of fact and of law stated in said order and modifications thereof, and subordinate questions arising under such issues, shall be considered in deciding the case. Statements and admissions made by the parties at the conference shall not be binding upon them unless the same are incorporated in the pretrial order. At the trial, no reference shall be made to what was said or done at the conference other than the pretrial order, unless the same becomes necessary in connection with the modification of such order, or in connection with motions for a new trial.

13. **Modification of the pretrial order.** The pretrial order shall be deemed interlocutory in its nature; and for good cause shown and in the furtherance of justice, the trial court may amend or modify the original pretrial order at and during the trial, notwithstanding the expiration of the term at which such former order was made. No particular formality shall be required to effect such modification other than a request therefor entered in the record, and that the parties be accorded a hearing at which the subject of such modification shall be fully discussed and considered in substantially the same manner as at the pretrial conference. If such modification is adjudged proper, the court may fix terms upon which the same may be allowed, and the court shall make such further orders as may be necessary to protect the adverse party against surprise.

14. **Appeals.** Being interlocutory in its nature, the pretrial order is not an intermediate appealable order, but errors occurring in the conduct of the pretrial proceedings, in the conference or in the pretrial order and which substantially prejudice the rights of a party may be reviewed on appeal from the final judgment in the case; provided such errors have been preserved by timely objection entered in the record.

15. **The purpose of these rules.** The purpose of these rules is to promote certainty and uniformity in the interpretation and application of G. S. 1949, 60-2705, and proceedings thereunder; and said statute and these rules are to be so interpreted and applied as to promote substantial justice. These rules shall be binding throughout this state upon the district courts and the attorneys in all pretrial proceedings, and in all cases involving such proceedings.

MOTION DAYS IN DISTRICT COURTS—1957

(Please see notes on page 157)

COUNTY	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	Sept.	Oct.	Nov.	Dec.
Allen (See note 1)	Iola	Spencer A. Gard	Mrs. Ina F. West	37	*8* 28	11	4 18	1 15	*7* 27	17	9	*1* 14	4 25	16 .....
Anderson (See note 10)	Garnett	Floyd H. Coffman	Mrs. Nell R. Graves	4	4	1	*4*	5	3	*10*	6	*14*	1	6
Atchison	Atchison	Edmund L. Page	Hal Waisner	2	2 9 16 23 30	6 13 20 27	6 13 20 27	3 10 17 24	1 8 15 22 29	5 12 19 26	4 11 18 25	2 9 16 23 30	6 13 20 27	4 11 18 *26* .....
Barber (See note 3)	Medicine Lodge	Clark A. Wallace	Mrs. Edith Myers	24	9	*11*	8	*22*	16	12	6	*28*	7	5
Barton (See note 4)	Great Bend	Roy J. McMullen	Geneva Steincamp	20	2	6	*5*	3	1	*4*	4	2	*4*	4
Bourbon (See note 5)	Fort Scott	Harry W. Fisher	Amy Armstrong	6	4 *7* 11 18 25	1 8 15	1 8 15 22 29	5 12 19 26	3 10 *13* 17 24	7 14 21 28	6 *9* 13 20 27	4 11 18 25	1 8 15 22 29	6 13 20 ....
Brown	Hiawatha	Chester C. Ingels	Mrs. Edna Boicourt	22	22	19	19	16	21	4	17	22	19	17
Butler Div. No. 1 Div. No. 2	El Dorado	..... George Reynolds W. N. Calkins	Harry R. Martin	13	9	1	*4*	4	2	*10*	5	1	*11*	3
Chase	Cottonwood Falls	Jay Sullivan	Mrs. Mildred Speer	5	25	26	29	26	31	28	27	25	29	27
Chautauqua Div. No. 1 Div. No. 2	Sedan	..... George Reynolds W. N. Calkins	Cleophal Call	13	17	4	1	*1*	3	3	*3*	3	4	*2*
Cherokee Columbus Div. Galena Div.	Columbus	Jerome Harmon	Nina Coldiron	11	8 3	5 7	5 7	2 4	7 2	4 6	3 5	8 3	5 14	3 5

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(Please see notes on page 157)

COUNTY	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	Sept.	Oct.	Nov.	Dec.
Cheyenne	St. Francis	Robert W. Hemphill	Charles N. Roberts	17	26	16	8	1 11	27	12	14	10	6	2 14
Clark (See note 7)	Ashland	Ernest Vieux	Mrs. Hope Grimes	31	10	7	7	4	9	6	5	10	7	5
Clay	Clay Center	Lewis L. McLaughlin	Hazel K. Chestnut	21	9	1	*4*	3	8	*3*	5	2	*4*	4
Cloud	Concordia	Marvin O. Brummett	Mrs. Hazel Eddy	12	7	6	6	*1*	8	5	*23*	22	20	16
Coffey	Burlington	Jay Sullivan	Mildred Preston	5	28	25	25	29	27	24	23	28	25	30
Comanche (See note 7)	Coldwater	Ernest M. Vieux	Mary Guyer	31	9	6	6	3	8	5	4	9	6	4
Cowley	Winfield	Doyle E. White	Mrs. Sallie K. Smith	19	4 18	1 15	1 15	5 19	3 17	7 21	6 20	4 18	1 15	6 20
Crawford Girard Div. Pittsburg Div.	Girard	L. M. Resler	Josephine Cattaneo	38	4 7	7 4	1 4	5 1	3 6	7 3	6 9	4 7	1 4	6 2
Decatur	Oberlin	Robert W. Hemphill	Mrs. Alice J. Vernon	17	24	14 25	6	9	13	6	12	8 14	7	12
Dickinson (See note 18)	Abilene	James P. Coleman	Seth Barter, Jr.	8	7	7	5	4	*20*	4	*9*	1	5	3
Doniphan	Troy	Chester C. Ingels	Virgil W. Begesse	22	23	20	20	17	22	5	18	23	20	18
Douglas (See note 8)	Lawrence	Frank R. Gray	Mrs. Lucille Allison	41	4	*4*	1	5	*6*	7	6	4	*4*	6
Edwards	Kinsley	Lorin T. Peters	John Stoner	33	9e	*11* 6e	6e	3e	*6* 2e	5e	4e	*28* 2e	6e	4e
Elk Div. No. 1 Div. No. 2	Howard	George Reynolds W. N. Calkins	Mrs. Floy B. Magers	13	7	5	5	2	*6*	4	*16*	4	5	5

MOTION DAYS IN DISTRICT COURTS—1957—CONTINUED

(Please see notes on page 157)

COUNTY	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	Sept.	Oct.	Nov.	Dec.
Ellis	Hays	Benedict P. Cruise	Walter J. Staab	23	21	*4*	11	8	*20*	10	10	*21*	12	9
Ellsworth	Ellsworth	A. R. Buzick	Harold E. Grant	30	21	14	5	22	28	17	3	7	5	23
Finney	Garden City	Roland H. Tate	G. Mae Purdy	32	*14*	8a	8a	5a	*13*	7a	*16*	4a	8a	6a
Ford (See note 7)	Dodge City	Ernest Vieux	Elta J. Riley	31	11 18 25	8 15 22	8 15 22 29	5 12 19 26	10 17 24 31	7	6 13 20 27	4 11 18 25	1 8 15	6 13 20 .....
Franklin (See note 10)	Ottawa	Floyd H. Coffman	Christina Woke	4	*7*	6	6	*1*	1	5	*9*	9	6	4
Geary (See note 18)	Junction City	James P. Coleman	Frank C. Woodward	8	8	3	*4*	5	8	*3*	4	2	11	5
Gove (See note 9)	Gove	Benedict P. Cruise	Mrs. Louise Brown	23	23	20	*18*	11	16	*17*	13	4	*18*	12
Graham	Hill City	C. E. Birney	Louise Lee	34	10	*4*	13	17	*13*	5	*16*	16	12	12
Grant	Ulysses	L. L. Morgan	Mrs. Juanita Barber	39	7d	4d	4a	*8*	6d	3d	21a	7d	4d	*2*
Gray (See note 7)	Cimarron	Ernest Vieux	Carrie Borland	31	8	5	5	2	7	4	3	8	5	3
Greeley	Tribune	Ronald H. Tate	Laura M. Holmes	32	2a	*11*	6a	2a	1a	4a	11a	*21*	6a	3a
Greenwood Div. No. 1 Div. No. 2	Eureka	..... George Reynolds W. N. Calkins	Alma Long	13	*21*	8	7	5	*20*	6	6	*14*	7	6
Hamilton	Syracuse	Ronald H. Tate	Amelia J. Minor	32	4a	*18*	6d	2d	3a	6a	13a	*14*	6d	3d
Harper (See note 3)	Anthony	Clark A. Wallace	Helen Pearl	24	*14*	6	7	*8*	15	*17*	5	*14*	6	4
Harvey (See note 13)	Newton	Alfred G. Schroeder	Mrs. Mabel A. McMullen	9	10 24	*11* 21	7 21	11 25	*13* 23	6 20	5 19	3 17 31	*12* 21	5 19 .....

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(Please see notes on page 157)

County	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	Sept.	Oct.	Nov.	Dec.
Haskell	Sublette	L. L. Morgan	Mrs. Evelyn Yount	39	7a	4a	*11*	1a	6a	3a	*16*	7a	4a	9a
Hodgeman	Jetmore	Lorin T. Peters	Jane Hoagland	33	9d	*25* 6d	6d	3d	*20* 2d	5d	4d	2d	*11* 6d	4d .....
Jackson	Holton	Robert H. Kaul	Mrs. Florence Clements	36	*14*	6	6	3	*6*	5	4	*7*	6	4
Jefferson	Oskaloosa	Robert H. Kaul	Mrs. Myrtle Kimmel	36	11	8	*4*	5	10	*3*	6	11	*4*	6
Jewell	Mankato	Donald J. Magaw	Iris Cosand	15	17	7	4	18	16	3	19	17	12	4
Johnson (See note 14) Div. No. 1 Div. No. 2 Div. No. 3	Olathe	..... Earl E. O'Conner Clayton Brenner Raymond H. Carr	Mrs. Betty West	10	7	4	4	1	6	3	2	7	4	2
Kearny	Lakin	Roland H. Tate	Bertha Adams	32	4d	6d	*11*	4a	3d	6d	13d	2d	*11*	5a
Kingman (See note 3)	Kingman	Clark A. Wallace	Gladys Layman	24	11	8	*25*	5	17	*3*	*23*	11	8	*9*
Kiowa (See note 7)	Greensburg	Ernest Vieux	Eunice E. Rich	31	9	6	6	3	8	5	4	9	6	4
Labette Oswego Div. Parsons Div.	Oswego	Hal Hyler	H. L. Lane	16	11 25 7	28 25	8 29 25	19 29	10 24 27	7 21 10	6 20 9	25 28	8 22 18	6 20 9
Lane	Dighton	Roland Tate	Mrs. Eva Cramer	32	3a	7a	*18*	3a	2a	5a	12a	3a	*18*	4a
Leavenworth	Leavenworth	Joseph J. Dawes	Mary Kate Gausz	1	4	1	1	5	3	7	6	4	1	6
Lincoln	Lincoln	A. R. Buzick	Roy Livingood	30	31	18	1	1	20	18	4	2	9	19
Linn	Mound City	Harry W. Fisher	George Huff	6	3 17	7 21	7 21	*1* 18	2 16	6 20	5 19	10 24	7 21	*2* 19

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(Please see notes on page 157)

COUNTY	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	Sept.	Oct.	Nov.	Dec.
Logan	Russell Springs	Benedict Cruise	Mrs. Ada F. Rogge	23	24	21	14	*1*	17	13	*3*	17	14	*2*
Lyon	Emporia	Jay Sullivan	Cleadora Held	5	30	27	27	24	29	26	25	30	27	26
Marion (See note 18)	Marion	James P. Coleman	C. J. Ross	8	10		6	3	*6*	6	5	*7*	6	4
Marshall	Marysville	Lewis L. McLaughlin	W. J. Koppes	21	4		8	5	*6*	7	6	*7*	8	6
McPherson	McPherson	Alfred Schroeder	Donald S. Clark	9	*14* 25	8 15	8 22	*1* 19	3 17 31	14 28	13 27	*7* 25	8 22	6 20 .....
Meade (See note 7)	Meade	Ernest M. Vieux	Nell Bradley	31	7	4	4	1	6	3	2	7	4	2
Miami	Paola	Harry W. Fisher	Mrs. Ethel J. Hunt	6	2 15	*4* 19	5 19	2 16 30	14	*3* 18	3 17	*7* 22	5 19	3 17 .....
Mitchell	Beloit	Donald J. Magaw	Ida B. Jamison	15	14	8	7	15	17	6	23	18	14	5
Montgomery Independence Div. Coffeyville Div.	Independence	Warren B. Grant	M. D. Smith	14	 5 4	 2 1	 2 1	 6 5	 4 3	 1 7	 7 6	 5 4	 2 1	 7 6
Morris (See note 18)	Council Grove	James P. Coleman	Mrs. Virginia Scholes	8	11	6	7	*1*	9	*17*	6	4	7	*2*
Morton	Richfield	L. L. Morgan	Mrs. Irene Kuder	39	8d	*11*	5a	2d	7d	4d	*3*	8d	5d	10d
Nemaha	Seneca	Chester C. Ingels	Ruth Shaffer	22	21	18	18	15	20	3	16	21	18	16
Neosho Erie Div. Chanute Div.	Erie	B. M. Dunham	Mamie E. Hayes	7	 2 8	 6 5	 6 5	 3 9	 1 7	 5 4	 4 10	 2 9	 6 5	 4 3

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(Please see notes on page 157)

COUNTY	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	Sept.	Oct.	Nov.	Dec.
Ness	Ness City	Lorin T. Peters	Dorothy Stecklein	33	10e	7e	*11* 7e	4e	3e	6e	*9* 5e	3e	7e	*9* 5e
Norton (See note 6)	Norton	Robert W. Hemphill	Arthur V. Poage	17	7 14 23	13	9	15	17	7	2 11	11	19	11 ....
Osage	Lyndon	A. K. Stavely	Mrs. Shirley Hull	35	4	1	*12*	5	3	*11*	6	4	*12*	6
Osborne	Osborne	Donald J. Magaw	Elma McColl	15	18	4	8	19	13	7	20	21	15	6
Ottawa	Minneapolis	A. R. Buzick	Cora F. Siebenaler	30	7	28	29	7	30	20	6	21	25	30
Pawnee	Larned	Lorin T. Peters	Mrs. Eulah Almquist	33	*28* 8d	5d	5d	*8* 2d	1d	4d	3d	*14* 1d	5d	3d .....
Phillips	Phillipsburg	Robert W. Hemphill	Gene Britt	17	22	4 12	5	12	6	5	10 16	24	8	10 .....
Pottawatomie	Westmoreland	Robert H. Kaul	Deane L. Arnold	36	10	7	7	*2*	9	6	*3*	10	7	*3*
Pratt (See note 3)	Pratt	Clark A. Wallace	Verna J. Barber	24	10	7	*11*	4	*20*	13	*9*	10	*11*	6
Rawlins	Atwood	Robert W. Hemphill	Mrs. Louise Portschy	17	25	15	7 18	10	20	11	13	9	5 11	13 .....
Reno	Hutchinson	John F. Fontron	Glenn R. Williams	40	4 11 18 25	1 8 15 22	1 8 15 22 29	5 12 19 26	3 10 17 24 31	7 14 21 28	6 13 20 27	4 11 18 25	1 8 15 22 29	6 13 20 27 .....
Republic	Belleville	Marvin O. Brummett	Warren A. Scott	12	8	*4*	5	2	*6*	4	24	*21*	19	17

MOTION DAYS IN DISTRICT COURTS—1957—CONTINUED

(Please see notes on page 157)

COUNTY	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	Sept.	Oct.	Nov.	Dec.
Rice (See note 4)	Lyons	Roy J. McMullen	Laura Saint	20	*1*	4	4	*2*	6	3	*3*	7	5	2
Riley (See note 11)	Manhattan	Lewis L. McLaughlin	Joseph F. Musil	21	*7*	8	1	*1*	10	5	*3*	4	1	2
Rooks (See note 12)	Stockton	C. E. Birney	Irma Renner	34	*14*	13	14	18	*6*	6	*3*	17	13	13
Rush	La Crosse	Lorin T. Peters	Esta Manahan	33	*14* 8e	5e	*25* 5e	2e	1e	4e	*23* 3e	1e	5e	3e .....
Russell (See note 9)	Russell	Benedict P. Cruise	George W. Brandt	23	*7*	18	12	9	*6*	11	11	*7*	13	10
Saline	Salina	A. R. Buzick	Mrs. Winifred Groth	30	4	5	11	16	8	7	9	3	6	2
Scott	Scott City	Ronald H. Tate	Nellie Scheuerman	32	3d	7d	7d	*8*	2d	5d	12d	3d	7d	*9*
Sedgwick	Wichita		L. D. Leland	18										
Div. No. 1		William C. Kandt												
Div. No. 2		Howard C. Kline												
Div. No. 3		B. Mack Bryant												
Div. No. 4		Geo. Austin Brown												
Div. No. 5		Henry Martz												
Div. No. 6		E. E. Sattgast												

All motions in civil cases, except divorce, are heard on the second Monday morning following the filing thereof. These motions are assigned to the various divisions of court by the Assignment Judge who mails notices of hearings to attorneys of record in advance.

All motions in divorce cases, including contempt and custody, are heard at 2:00 P. M. on the second Monday afternoon following the filing thereof, at which time they are called by the Assignment Judge and assigned to the various divisions of court for immediate hearing.

All motions in criminal cases are heard by the Judge in charge of the Criminal Court, by arrangement with him. The Criminal Court rotates among the various divisions from term to term.

MOTION DAYS IN DISTRICT COURTS—1957—CONTINUED

(Please see notes on page 157)

COUNTY	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	Sept.	Oct.	Nov.	Dec.
Seward	Liberal	L. L. Morgan	Mrs. Mary Linley	39	*14*	8a	8a	*15*	10a	7a	14a	*14*	8a	13a
Shawnee	Topeka		Mrs. Lucille Carter	3						14	6	18	8	20
Div. No. 1		Beryl R. Johnson			18	8	1	12	3		27		29	
							22		24					
Div. No. 2		Paul H. Heinz			4	15	8	19	10	21	13	4	15	6
					25		29		31			25		27
Div. No. 3 (See note 16)		Dean McElhenny			11	1	15	5	17	7	20	11	1	13
						21		26		28			22	
Sheridan	Hoxie	C. E. Birney	Mrs. Minnie Carder	34	7	*25*	11	15	*20*	3	9	*7*	11	9
Sherman	Goodland	C. E. Birney	Viva Peter	34	9	12	12	*1*	10	*10*	11	15	*18*	11
Smith	Smith Center	Donald J. Magaw	Lucille Figg	15	16	6	25	17	15	17	18	16	13	2
Stafford (See note 4)	St. John	Roy J. McMullen	Arlene McCandless	20	7	*5*	6	1	*7*	5	6	*1*	6	3
Stanton	Johnson	L. L. Morgan	Tina B. Wilson	39	8a	*25*	4d	2a	7a	4a	*9*	8a	5a	9a
Stevens	Hugoton	L. L. Morgan	John F. Fulkerson	39	*28*	7a	*25*	4a	9a	6a	21d	*28*	7a	12a
Sumner	Wellington	Wendell Ready	Laura McCormick	25	3	5	5	2	7	4	10	1	5	3
Thomas	Colby	C. E. Birney	Mrs. Winifred G. Van Horn	34	8	11	*18*	16	*27*	4	10	14	*4*	10
Trego (See note 9)	WaKeeney	Benedict P. Cruise	Mrs. Albert H. Acre	23	22	19	*4*	10	15	*3*	12	3	*4*	11
Wabaunsee (See note 15)	Alma	A. K. Stavely	Dorothy M. Walker	35	2	*5*	5	2	*7*	4	3	*1*	5	3
Wallace (See note 9)	Sharon Springs	Benedict P. Cruise	Evelyn P. Warren	23	24b	21b	14b	*15*	17b	13b	*16*	17b	14b	*16*
Washington	Washington	Marvin O. Brummett	William Anderson	12	9	5	*4*	3	7	*3*	25	23	*18*	18
Wichita	Leoti	Roland H. Tate	Kate Elder	32	2d	6a	7a	*15*	1d	4d	11d	2a	7a	*16*
Wilson	Fredonia	B. M. Dunham	Dwaine Spoon	7	1	7	7	2	2	6	3	3	7	5

MOTION DAYS IN DISTRICT COURTS—1957—CONCLUDED

(Please see notes below)

COUNTY	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	Sept.	Oct.	Nov.	Dec.
Woodson	Yates Center	Spencer A. Gard	Zelma Stockebrand	37	15	12	*5*	16	14	*4*	*10*	15	5	17
					.....	.....	19	.....	.....	.....	24	.....	26	.....
Wyandotte	Kansas City		Richard D. Shannon	29										
Div. No. 1		E. L. Fischer			5	2	2	6	4	1	14	5	2	7
Div. No. 2		Willard M. Benton			12	9	9	13	11	8	14	11	9	14
Div. No. 3		Harry G. Miller, Jr.			19	16	16	20	18	15	21	19	16	21
Div. No. 4		William H. McHale			26	23	23	27	25	22	28	26	23	.....
(See note 17)														

e—9:00 a. m. a—10:00 a. m. c—1:30 p. m. d—2:00 p. m. b—1:00 p. m.

NOTE 1.—Italicized dates indicate the first day of a regular term of court.

NOTE 2.—In Allen county July 22 is motion day.

NOTE 3.—In Harper county, Barber county, Pratt county and Kingman county, court convenes at 10:00 a. m. on all motion days. Court convenes at 9:00 a. m. for jury trials.

NOTE 4.—In Barton county, Rice county and Stafford county, court convenes at 10:00 a. m. except when jury appears, when court will convene at 9:00 a. m.

NOTE 5.—In Bourbon county, July 12-19-26 are motion days. In Linn county, July 8-25, motion days. In Miami county, July 9-23, motion days.

NOTE 6.—In Norton county, August 26 is motion day.

NOTE 7.—In Comanche county, Clark county, Ford county, and Gray county, court convenes at 10:00 a. m. In Meade county and Kiowa county, court convenes at 2:00 p. m.

NOTE 8.—In Douglas county, court convenes at 9:30 a. m. The civil docket will be called at 9:30 a. m. and the criminal docket will be called at 2:00 p. m.

NOTE 9.—In Russell, Ellis, Trego, Gove and Logan counties, court convenes at 9:00 a. m. In Wallace county, court convenes at 1:00 p. m.

NOTE 10.—In Anderson county and Franklin county, court convenes at 9:30 a. m.

NOTE 11.—In Riley county, opening day of term delayed one day on account of Labor Day.

NOTE 12.—In Rooks county, opening day of term delayed one day on account of Labor Day.

NOTE 13.—In Harvey county and McPherson county, court opens at 9:30 a. m.

NOTE 14.—In Johnson county, July 1 is motion day.

NOTE 15.—In Wabaunsee county, delayed one day on account of New Year's Day.

NOTE 16.—In Shawnee county, the schedule continues through July and August as follows:

Division No. 1.—Judge Beryl R. Johnson: July 5 and 26 and August 16.
Division No. 2.—Judge Paul H. Heinz: July 12 and August 2 and 23.
Division No. 3.—Judge Dean McElhenny: July 19 and August 9 and 30.

NOTE 17.—In Wyandotte county, the division having law and equity has a motion day on Thursday of each week, except in August. The schedule continues through July as follows:

Division No. 1.—Judge E. L. Fischer: July 6.
Division No. 2.—Judge Willard M. Benton: July 13.
Division No. 3.—Judge Henry G. Miller: July 20.
Division No. 4.—Judge William H. McHale: July 27.

NOTE 18.—In Dickinson, Geary, Marion and Morris counties, court convenes at 10:00 a. m. No jury term in Dickinson, and June terms in Morris and Geary except on special order.

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